

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BLUEFIELD DIVISION**

**WEST VIRGINIA HIGHLANDS
CONSERVANCY, APPALACHIAN
VOICES, and THE SIERRA CLUB,**

Plaintiffs,

v.

Civil Action No. 1:19-cv-00576

BLUESTONE COAL CORPORATION,

Defendant.

FIRST ADDENDUM TO THE CONSENT DECREE

WHEREAS, on February 17, 2021, the Court entered a Consent Decree (Doc. #115) in this action that did “not resolve Plaintiffs’ claims pursuant to 33 U.S.C. § 1365(d) and 30 U.S.C. § 1270(d) for costs of litigation and attorney’s fees incurred in this action, although it did resolve the timing of Defendant’s payment of any award of fees and/or costs” (CM/ECF #115, ¶25);

WHEREAS, on February 24, 2021, and in accordance with Paragraph 26 of the Consent Decree, Plaintiffs filed a Motion for an Award of Attorneys’ Fees, Expert Witness Fees, and Expenses (CM/ECF #116);

WHEREAS, on September 29, 2021, the Court issued a Memorandum Opinion and Order (CM/ECF #122) granting Plaintiffs’ fee motion and ordering Defendant to pay a total fee and costs award of \$165,274.03 “in the manner set forth in the consent decree” (CM/ECF #122 at 17);

WHEREAS, under the terms of the Consent Decree, Defendant then was required to pay 50% of the fee award on October 1, 2021 and 50% on November 1, 2021 (CM/ECF #115, ¶30).

WHEREAS upon the entry of the Court’s order on September 29, 2021, Defendant was not able to make the initial payment in the limited time required under the Consent Decree.

WHEREAS, on September 30, 2021, counsel for the parties conferred, and Plaintiffs agreed to forego enforcing the fee award payment provisions of the Consent Decree until after October 21, 2021, so long as Defendant made payment to Plaintiffs' counsel of \$50,000 by October 15, 2021 and payment of the balance of \$115,274.03 by October 21, 2021. Defendant delivered a cashiers' check in the amount of \$50,000 payable to Plaintiffs' counsel on October 22, 2021, but did not pay the full balance due by October 21, 2021;

WHEREFORE,

The Parties agree to the following additions to the Consent Decree in this matter:

Before 3:00 p.m. E.D.T. on October 29, 2021, Defendant shall pay an additional \$5,000.00 to Plaintiffs for attorney fees and costs—in addition to the balance of the fee owed (*i.e.*, \$115,274.03)—to satisfy the fee and cost award ordered by the Court's September 29, 2021 Order.

Bluestone Resources, Inc, by the signature of its authorized representative on this Addendum, hereby agrees to guarantee Defendant's obligation to pay the additional \$5,000.00 to Plaintiffs. Accordingly, the obligation of Defendant under this Addendum shall be treated as a joint obligation of Bluestone Resources, Inc., for all purposes including, but not limited to, the enforcement of this Decree.

Except for the creation of and guarantee for the \$5,000.00 obligation described above, no other term or condition of the Consent Decree is modified by this Addendum to the Consent Decree.

ENTERED: _____

DAVID A. FABER
SENIOR UNITED STATES DISTRICT JUDGE

For the Plaintiffs West Virginia Highlands Conservancy, Inc., Appalachian Voices, and Sierra Club:

By: /s/ Derek O. Teaney

Date: October 27, 2021

For Defendant:

By: S Benj Bryant
ITS COUNSEL

Date: October 27, 2021

For Bluestone Resources, Inc.:

By: S Benj Bryant

Date: October 27, 2021